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ABSTRACT

The 1984 United States Equal Access Act is analyzed in this paper, with a focus on the implications of the Supreme Court ruling in "Board of Education of the Wayside County Schools, etc., et al. v. Bridget Mergens" for church/state separation issues in the public schools. The "Mergens" case involved an extracurricular student Bible study club in a school that received federal financial support. The first section of the paper surveys cases dealing with church/state separation issues in educational settings. A background of the "Mergens" case based on local interviews is presented in the second section. The third section offers a historical overview of the American dilemma of church/state separation. The Supreme Court ruling is analyzed in the fourth section, asking whether the "Mergens" case has created a condition of multiple ambiguities. The final section offers five guidelines for administrators, who are cautioned to read the Equal Access Act thoughtfully and reflectively and to engage in integrative planning. Appendices contain a sample school policy for equal access and student clubs and an epilogue to the case. (18 references) (LMI)

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EQUAL ACCESS, MERGENS AND THE EDUCATION-RELIGION MIX

by

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INTRODUCTION

The concept of a nation without strong attachment to some religious faith, without any taxation levied for the support of churches and clergy demanded a strong political intelligence. Mr. Madison was that person, joined by Mr. Jefferson. Understandable, desirable, and even necessary as conceived by those two gentlemen, the concept has been troubling ever since, possibly because the nation has not had the equal of the combined ethical- political intelligence since the passing of those two. Over the intervening two hundred years, first one group and then another, has exercised political muscle in a wide variety of attempts to alter, to slide by, to end run or to completely set aside what those gentlemen wrote into the First Amendment of the Constitution. In fairness, it must be noted that the First Amendment is not without its ambiguities; that is, those freedoms cannot be absolutely applied in all situations of conflict. Those ambiguities, in concert with the Equal Access Act place public school districts on the horns of a dilemma.

L. B. 98-377 was passed by the United States Congress in

1984. Also known as the Equal Access Act, it was signed by President Reagan on August 11, 1984. It became effective on August 17, 1984, and was published in the Congressional Record of October 11, 1984. The Act is identified as 20 U.S.C. $$ 4071-4074.

In part, that Act states that "It shall be unlawful for any public secondary school which receives Federal financial assistance and which has a limited open forum to deny equal accessor a fair opportunity to, or discriminate against, any students who wish to conduct a meeting within that limited open forum on the basis of the religious, political, philosophical, or other content of the speech at such meetings." In that section, and those immediately following, the legislators used several undefined terms: limited open forum, noncurriculum, noninstructional, nonschool are among those terms which were left to the courts to define. (Several professional groups developed guidelines with definitions, intended as helps for implementation.) Later phraseology seems at first reading to be ambiguous, where it is stated that "notwithstanding the availability of any other remedy under the Constitution or the laws of the United States, nothing in this title shall be construed to authorize the United States to deny or withhold Federal financial assistance to any school." Rationally considered, it would seem that one phrase, then, is for identification; the other is for dollar protection.

Creating a new conceptual arrangement for public schools and religious groups, the several issues were not raised for initial settlement before the nation's highest court until the case of Board of Education of the Westside Community Schools, etc., et al., Petitioners v. Bridget C. Mergens, by and through her next friend, Daniel N. Mergens, et al. 110 S. Ct. 2356 (1990). Earlier, the 9th Circuit had dealt with a case that was strikingly similar to Mergens (See Garnett v. Renton School Dist. #403, 874 F.2d 608, 1989), but with an opposite ruling, paving the way to the Supreme Court. Through the Court's holding, high schools that have limited student clubs to those that might best be described as conventional, may soon find that they must be hospitable to very controversial clubs. Mergens will be the focal point of this paper; however, before analyzing Mergens, a cursory survey of preceding cases focused upon the separation of church and state as that question developed in education settings is pertinent.

Arbitrarily selected as a starting point, Pierce v. Society of Sisters 268 U.S. 510 (1925) provided guidance on the powers of states relative to compulsory education and regulations of private schools. That is, compulsory education could not be limited to public schools, and states could, if they chose to do so, regulate private schools. Coming at nearly the same time, Meyer v. State of Nebraska 262 U.S. 390 (1923) curtailed the power of the state and verified the right of teachers in private schools to teach certain subjects desired by parents. Another

case which restricted the state's power was West Virginia State Board v. Barnette 319 U.S. 624 (1943) as that state's mandate that every public school pupil must regularly repeat the pledge of allegiance to the flag of the nation was set aside, a reversal of the Gobitis ruling of 1940. Measured against the Constitution, then, there occurred a series of cases in which religious preferences were protected from state infringement. These and other cases seemed to reinforce the notions of separation of church and state.

The child benefit theory cases, such as Cochran v. Louisiana State Board 281 U.S. 370 (1930) and Everson v. Board of Education of Ewing Township 330 U.S. 1 (1947) seemed to fall into that same vein. That is, assistance could not be given from public treasuries to private (religious) schools, but benefits could be used by children attending any school, because denial would unfairly discriminate against those children attending a school chosen for them by their parents. Again, the circumstance was measured against the First Amendment of the Constitution.

McCollum v. School District #71 333 U.S. 203 (1948) called into question the teaching of religious tenets within the walls of a public school. Even though the teaching was conducted by dividing children according to sectarian/denominational preference, the instruction was carried out by clergy given space for it in a public school, and the practice was ruled unconstitutional. Subsequently, the Court ruled against the

intrusion of a "neutral" prayer into public schools in Engle v. Vitale 370 U.S. 421 (1962) and with equal vigor against a mandate to teach the Genisis story of creation in Epperson v. Arkansas 303 U.S. 97 (1968). Several cases that developed from the intent to provide public funds to some parts of private school operation were ruled as unconstitutional. See, for example, PEARL v. Nyquist 413 U.S. 756 (1976) and Meek v. Pittenger 421 U.S. 349 (1975).

Although Mr. Washington was much more at home mixing religion and government than either Mr. Jefferson or Mr. Madison, there was not much litigation of such questions until the twentieth century. As state legislatures became involved in endorsing certain new concepts, citizens took issue, seeking rulings from the Supreme Court. Given the influence of Western European culture on the United States, and given the inextricable presence of art, music, literature and so on in the Christian church over several centuries, it becomes apparent that a literal and complete separation of church and state in instructional settings is not possible. What one citizen sees as religious neutrality another may see as hostility. So, it is a relationship in degree, and that uncertainty provides the basis for citizen dispute. It did provide the base for the dispute in Mergens.

BACKGROUND TO MERGENS

In order to secure information bearing upon the operation of public school districts and of public secondary schools consequent to Mergens, locally involved persons were interviewed. One member of the Westside Board of Education, the attorney who represented that board, the then superintendent of the Westside District, and the principal of Westside High School all talked with this author about the Mergens case.

The history of that Local Education Agency (LEA) had long been to provide a wide variety of enrichment activities. Conceptually, these activities were viewed as important parts of the whole educational endeavor, and they comprised one of the characteristics which marked Westside High School as different from the 12-15 other high schools, both public and private, in the Omaha metropolitan area. A comparatively high tax burden was carried by the citizens of that LEA, and accepted as necessary to create what was described by successive school boards over a half century as an expanded and sophisticated set of educational opportunities. Westside High School was the single high school in that independent public school district, and was supported at a per pupil cost level that marked it as different from others in the same geographical area. Within that LEA, and among educators in adjacent public schools, there was a generally accepted notion that activities providing enrichment to classroom work were desirable, without regard to grades or credits, when an LEA decided that such were affordable. That notion is harmonious with national perspectives on secondary education, is deeply

embedded in the research and development literature on American secondary education, and it was embraced wholeheartedly in Westside High School. As Justice Marshall observed, Westside has a "highly structured environment." Student initiative in forming that environment has been encouraged, and Westside promotes the activities and goals of all approved clubs.

That was the environment in which Bridget Mergens attended high school and in which she approached the principal of the school asking for space in which to convene a student group that would have as its intention the study of the Bible. There was no request for a faculty sponsor, although the administrative guidelines of the Westside High School stated that student groups must have faculty sponsorship, and there was no particular reason to grant exceptionality to the Mergens' proposal. There was a req est that the existence of the "club" should be publicized through in-house media, especially a listing of such clubs that was periodically issued by the prinicpal's office. It was not the provision of space for after hours use that posed a problem for school officials; rather, it was (1) the Westside guideline that demanded an assignment of a faculty member to every "club" and (2) the publication in which the school would be identified as sponsoring a Christian organization, meeting on LEA property. School administrators saw this as a public declaration of endorsing a Christian group, and a particular branch of Christianity, at that. Their understanding of the First Amendment, Establishment Clause, led them to decline to

participate in the request, and created the conflict that fostered the litigation. This was not an outside group, seeking use of space, after school hours, for a fee, or for free. It was an inside group, seeking space after school hours, but with publication of their existence and meeting times via official announcements from the principal's office.

DISCUSSION

The separation of church and state has vacillated in its intensity over the history of the nation. Practically, it might be generalized that the public schools of the nation have had a strong sponsorship from citizens who embraced, or at least tolerated, an ethical viewpoint that had/has its origin in the Judeo-Christian doctrines. Still practically, but narrower, those schools historically embraced cultural background notions that were most harmonious with Protestant Christianity. That condition was a strong motivator for Catholic parents to provide their own private schools under the control of parish clergy and paid for by private funds. The secular and sectarian influences, then, emerged in elementary and secondary schools of the latter nineteenth century, with most of the sectarian influence under the direction of the Catholic Church. That strong interest still prevails at the ending of the twentieth century, augmented by a fair number of persons who might be described as fundamentalist Christians -- not Catholic, but not "mainline" Protestant, either -- who have decided to separate their children for schooling from the public schools. These two categories of sectarian schools

may not complete the picture for religiously motivated education of American schoolchildren, but they represent the vast majority of elementary and secondary children who are of the compulsory attendance age, who are being systematically educated away from public schools.

To separate church and state in public schools is a major problem. First, American culture has as a dominant antecedant the Western European history. That includes several centuries of Christian dominance -- in ethics, art, architecture, finance, and so on. It is not possible, then, to completely "sanitize" public schooling from Christian roots. For example, to remove every aspect of Christian influence would ridiculously diminish what might be taught in art, in music, in leadership, and so on. Public schools are not going to be de-Christianized. Second, many parents want a strong Christian influence in public schools. That means that where Christians of some particular sect are in strong majority, they may demand that the local board of education structure a curriculum that extols Christianity as described in their particular church. There are numerous examples of such among the 15,000 plus public school districts. Simply by using the electoral process, citizens in strong voting majorities see to it that their views are strongly engrained into the curriculum of the public school; e.g., opening the schoolday of every classroom with a unisonal prayer, led by the teacher, asking guidance from Jesus Christ. Separation of church and state when citizens do not want them separated is no easy task, and illegality does not present a big barrier to such parents.

But, among those local school boards that do conscientiously want to keep their schools in a religiously neutral position, the task is difficult because an understanding of that neutrality does change from time to time. Courts hav vacillated, and the present Supreme Court may be in a change mode.

President Washington was quite comfortable in using allusions to religion as he found it in the Holy Bible. His speeches contain many such references. The foremost governmental representative of the young nation had no problem with a kind of ecumenicity in his public utterances. With only Mr. Adams in between, Presidents Jefferson and Madison neither condoned nor engaged such sectarian familiarity in their public statements. They attempted a scrupulous separation, trying to demonstrate what they saw as necessary if the nation was not to become theologically dominated. That dominating condition was strong in the history of western European nations over several centuries, and it was a large part of what those two political geniuses saw as prominant parts of the whole fight for liberty; i.e., to be free of the obligation for financial and vocal support of some church. With their passage and death, church and state separation became less of an issue and for over a century it was not a central argument at the national level, in part because citizens who felt uncomfortable with the general tenor of the developing public school systems withdrew their children and established private, separate schools.

It might be appropriate to identify Engle v. Vitale, 370

U.S. 421 (1962) as the point in time when the nation was again reminded of the importance of keeping church and state separate. The Court did not propose atheism, did not suggest that public schools had no obligation to teach ethical behavior, but did demand that it should not be taught by reliance upon some prayer for guidance. So, after more than a century of quiet mutual acceptance, tolerance, and a kind of unspoken ecumenicity among American citizens with regard to schools, the issue once again came to the fore -- this time in regard of what might be said and done in public schools. The line of cases that succeeded Vitale and the elimination of a (Christian) prayer as a part of the public school curriculum stayed with that precedent through the 1970s; however, out in the general population there was a decided lack of support for that position, and that lack became evident in the passage of the Equal Access Act in 1984. It was an obvious attempt to provide opportunities for prayer, in some form, in public schools.

The Mergens case is a logical successor to Vitale, for it represents successor political thinking and influence. Citizens, generally, are not so determined to keep religious thinking out of public schools as are scholars of history and law. Perhaps that is because they see a relationship between religion and morality; i.e., elimination of religion thinking and teaching in public schools leads to lowered morality among students. In any event, there was political support among elected government officials for the Equal Access Act. It remained for Mergens to occur to begin to provide an answer to the question, "What does

equal access mean in the real world of operating a school system and a high school?"

ANALYSIS

The definition of curriculum chosen by the Court in Mergens is key to understanding some of the meaning. Writng for the Court, Justice O'Connor chose to not seek an expert witness, but to go to a very general and short definition.

As Justice Marshal stated, Mergens "involves the intersection of the two First Amendment guarantees -- the Free Speech Clause and the Establishment Clause." That is, the Constitution stipulates that speech may not be suppressed. Tinker v. Des Moines ICSD, 393 U.S.503 (1969). At the same time, the Court has interpreted the Constitution as a bulwark against a state advancing a religion. Lemon v. Kurtzman, 403 U.S. 602 (1971). It is this relativity, this ambiguity that creates the problem for public schools as those LEAs strive for neutral, but not hostile ground.

The test for religious conflict from Lemon is of three parts. First, there must be a secular purpose in the activity. Second, there must be neither advancement nor prohibition of religion in the activity. Third, there must not be excessive entanglement between government and religion. Still, those criteria are difficult of understanding and implementation, as seen in a current example. In Weisman v. Lee, 909 F.2d 1090 (1990) it was agreed that a benediction at a graduation ceremony in a public school violated #2 of Lemon. Now before the Supreme

Court, the decision in that case which will likely be announced in 1991 may well show some new approach to interpreting the First Amendment.

Much of what the Court pronounced in Mergens had its antecedant in Widmar v. Vincent, 454 U.S. 263 (1981). Widmar originated from the campus of the University of Missouri, Kansas City when the administration of that public university permitted student religious groups to meet on campus and the Court stipulated that it was permissible. With a precedent determining that a public educational institution could allow a forum open enough to provide for student religious clubs, one of the remaining questions pertained to the difference between a secondary school and a university; i.e., compulsory attendance laws and age-maturity of the students involved. Largely overlooked by the majority, this issue received thoughtful treatment by Justice Stevens as he examined the conditions at Westside, especially in the footnotes to his dissenting opinion. Upon a careful reading of the copious footnotes included by Justice Stevens in his dissent, a scholar might deduce that the decision written by Justice O'Connor was less a seriously crafted statement of Constitutional law and more a statement of personal philosophy supported by careful exclusion as much as by inclusion of supporting data. Be that as it may, three justices voted with her and four others agreed with the decision that the Westside Community Schools board and administration was operating in contradiction to the Equal Access Law.

The practice at Westside High regarding the establishment of

clubs was well publicized and was recognized by Justice O'Connor.

> There is no written school board policy concerning the formation of student clubs. Rather, students wishing to form a club present their request to a school official who determines whether the proposed club's goals and objectives are consistent with school board policies and with the school district's "Mission and Goals" -- a broadly worded "blueprint" that expresses the district's commitment to teaching academic, physical, civic, and personal skills and values.

Examining the request as it came from Mergens to the principal's office, it was declined by those administrators.

> The school officials explained that school policy required all student clubs to have a faculty sponsor, which the proposed religious club would not or could not have, and that a religious club at the school would violate the Establishment clause. In March 1985, Mergens appealed the denial of her request to the Board of Education, but the Board voted to uphold the denial.

From that condition, the argument was raised to the federal courts. At the district court, the decision of Westside was supported, citing Widmar and Hazelwood School Dist. v. Kuhlmeier, 484 U.S. 260 (1988). Reversed at the United States Court of Appeals, Eighth Circuit, 867 F.2d 1076 (1989), that court focused on the relationship of clubs to curriculum and rejected the contention that Mergens' proposed club violated the Establishment Clause.

For the U.S. Supreme Court, the focus was upon Widmar, and the movement of that philosophy from a voluntary attendance university to a compelled attendance high school. There was a reasonableness here. In Widmar, the Court examined the whole concept of public forums in educational institutions and coined the phrase, equal access. The Act specifies that club meetings must be voluntary, not sponsored by the school nor by nonschool persons coming into the school. In essence, if student initiated in a setting of limited open forums, requests cannot be denied. From that position, it only remained for the Court to declare that, first, Westside had a limited open forum. That is, with such a variety as a French Club and classes in the French language, and with a Scuba Diving Club and classes in physical education, the Court found a breadth of relatedness and unrelatedness which indicated that an open forum existed. Second, by using a very general (dictionary) definition of the term 'curriculum' and reversing it to define noncurriculum, the Court found no real relationship between the Scuba Diving Club and the physical education curriculum, as claimed by the school. Third, by selection, the Court reiterated the Act's definition of forum.

> A "limited open forum" exists whenever apublic secondary school "grants an offering to or opportunity for one or more noncurriculum related student groups to meet on school premises during noninstructional times." "Meeting" is defined to include "those activities of student groups which are permitted under a school's limited open

forum and are not directly related to the school curriculum."

The Court also observed that "The assignment of a teacher, administrator, or other school employee to a meeting for custodial purposes does not constitute sponsorship of the meeting." Accepting such statements from the Act as literal and real, and as not in contradiction to the Constitution, then the Court could proceed and find no infirmity in the Act.

Several commentators have faulted the Court for an inadequate definition of the term, 'curriculum.' Specialists and experts could have been called to testify and explain relationships, to explain contemporary curriculum concepts and so on, but they were not. Rather, the Court settled for both a simplistic procedure for discovery of word meaning and reversal, and for accuracy of meaning for a key term in the Act, but undefined there.

Still, that part of the Court's pronouncement may not be as unsettling as the directive that the school must list the religious clubs in their publication of clubs available to students. If announced at an annual Club Fair, for example, how could peer pressure be handled? How is proselytizing into sectarian interestes to be avoided? In a governmentally compelled attendance setting, pressure to join a religious group could quickly become contrary to the Establishment Clause as it states that "(government) shall make no law respecting an establishment of religion?" Has Mergens created a condition of multiple ambiguities in which even the most careful, most

thoughtful school administrator can find nothing better than the quicksand of a "Catch 22" condition?

ADMINISTRATOR APPLICATIONS

For practitioners and for graduate students of educational administration and supervision, it is possible to develop a few succinct guidelines. (The amended Board Policy of the Westside Community Schools is attached as Appendix A.) Given the concept of expanding student experiences by way of opportunities sometimes labeled cocurricular or extracurricular, the Equal Access Act and the Mergens case demand knowing about some new do's and don't's. First, if a school decides to forego any federal financial support, it is released from all obligations in the Act. Exactly how a single public high school might prove it was in such a non-funded position if challenged in a court is a complex matter, and may lack for reality. Second, a public high school might examine and reorganize its clubs in such a fashion that every club is related to a class title, a class for which a grade is given by teachers evaluating student achievement. This has repercussiions for traditional interscholastic competition. Third, affirmative denial of endorsement and separation of the school from the club may be a part of the publicity announcing the club's existence. That is, an open forum or limited open forum means that many clubs whose main purpose is far afield from the goals/mission of the school may seek recognition and a meeting place, and that request cannot be denied. For such, an affirmative statement of nonsponsorship would be appropriate as

schools would develop a statement by which parents and students are truly informed. Fourth, the Act does not diminish the "authority of the school, its agents or employees, to maintain order and discipline on school premises, to protect the well being of students and faculty, and to assure that attendance of students at meetings is voluntary." That statement provides several opportunities for substantial control of such voluntary groups. Fifth, and finally, although the Act is an uncommonly direct mandate from the federal government to every local public school district, there are many administrative possibilities for management of the obligations posed in the Act. Although several sections of the Act still lack for judicial interpretation, every secondary school administrator needs to read the Act thoughtfully and reflectively, and engage in planning student administration which harmonizes the Act, Mergens, and that school.

References

Cochran v. Louisiana 281 U.S. 370 (1930)

Engle v. Vitale 370 U.S. 421 (1962)

Epperson v. Arkansas 393 U.S. 97 (1968)

Equal Access Act, 20 U.S.C. ss 4071-4074

Everson v. Bd. of Ed. of Erving Township 330 U.S. 1 (1947)

Garnett v. Renton 874 F. 2d 608 (1989)

Hazelwood School Dist. v. Kuklmeier 484 U.S. 260 (1988)

Lemon v. Kurtzman 403 U.S. 602 (1971)

McCollum v. School District #71 333 U.S. 203 (1948)

Meek v. Pittenger 421 U.S. 349 (1975)

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Westside Community Schools v. Mergens 110 S. Ct. 2356 (1990)

Widman v. Vincent 454 U.S. 263 (1981)

STUDENTS 5610

STUDENT CLUBS: EQUAL ACCESS

The Board of Education regards student clubs and organizations as an important part of the education and development of students. This policy is adopted pursuant to the Equal Access Act, 20 U.S.C. Sec. 4071-4074.

As used in this policy:
(a)"School" shall mean Westside High School;
(b)"Club" shall mean a sponsored club or a non-sponsored club of students of the school who wish to organize and meet for common goals, objectives, or purposes, but does not include school activities;
(c)"Sponsored club" shall mean a club which is directly under the sponsorship, direction, and control of the school;
(d)"Non-sponsored club" shall mean a student-initiated club which is not under the sponsorship, direction or control of the school, except as provided in this policy.

The school shall provide equal access and a fair opportunity to all clubs to organize and to meet on school premises during the times established for such meetings. The school will not discriminate against any club on the basis of the religious, political, philosophical, or other content of speech at the meetings of such clubs.

Sponsored clubs shall be sponsored by a member of the faculty or administration of the school. The school shall not sponsor clubs which advocate particular religious, political, or philosophical beliefs or ideas, or which are adversarial or subversive in nature. Any such clubs shall be non-sponsored. The school may assign a monitor for each non-sponsored club. The school and the school district shall not be identified or associated with the goals, objectives, activities, beliefs, or opinions of any non-sponsored clubs or its members.

The Superintendent or designee shall implement this policy by establishing written guidelines for sponsored and non-sponsored clubs. The guidelines shall comply with the Equal Access Act.

Legal Reference: Equal Access Act, 20 U.S.C. Sec. 4071-4074

Policy Adopted: April 3, 1973
Policy Reviewed and Adopted: April 9, 1987
Policy Amended: August 6, 1990

STUDENT CLUBS: EQUAL ACCESS

REGULATIONS

The following general guidelines shall be observed in approving, establishing, and operating clubs at Westside High School.

1. Each new club must complete and submit a request form to the principal or designee stating the name, specific purpose of the club, the membership requirements, the activities of the club, and the meeting dates, and times. The principal or designee will respond to the request, accept or reject the application, and designate the club as either a sponsored club or a non-sponsored club.

2. Student participation in club activities and attendance at club meetings shall be voluntary and shall be limited to those individuals who are then currently enrolled as students at the school.

3. Clubs shall be allowed to meet on school premises from 7:00 a.m. to 8:00 a.m. and from 3:30 p.m. to 5:00 p.m. on days when school is in session. The time and place of all club meetings shall be subject to available space, conflicting activities and programs, and the availability of the faculty sponsor or the monitor assigned to the club. Clubs will be allowed to meet on school premises during other times of the day only in extraordinary or exceptional circumstances, as may be determined by the principal or designee in his or her sole discretion.

4. All clubs may publish their meetings in the high school daily announcements.

5. No hazing of students shall be permitted.

6. The principal or designee may deny the opportunity of any club to meet on school premises, and may deny permission of any non-school person to meet with or speak to a club on school premises, when

there exists a substantial likelihood of material and substantial interference with the orderly conduct of educational activities within the school or if the meeting or any expected activities of the club at the meeting are or will be in violation of any law or ordinance.

7. The principal or designee may temporarily or permanently terminate the opportunity of any club to meet on school premises in the future if the club has materially and substantially interfered with the orderly conduct of educational activities within the school, if the activities of the club have violated any law or ordinance, if the club or any of its members have abused school property, or if the club has violated any provision of this policy.

For sponsored clubs, the following guidelines will apply:

1. Each sponsored club will have a faculty member appointed as the sponsor. The sponsorship shall be approved by the principal or designee.

2. All activities of the club must have prior approval of the sponsor.

3. Club funds shall be subject to deposit, audit, and disbursement in accordance with the regulations of the administration and the school activity fund.

4. A list of sponsored clubs will be published in the Westside Warrior Handbook.

5. The content and placement of posters shall be approved by the club sponsor.

For non-sponsored clubs, the following guidelines will apply:

1. The formation of non-sponsored clubs shall be student initiated.

2. The principal or designee may appoint a monitor for the club who is an employee of the District. The monitor shall be responsible for monitoring the meetings to assure that attendance at the meetings is voluntary, to assure that the meetings do not materially and

substantially interfere with the orderly conduct of educational activities within the school, and to assure that order and discipline is maintained. Monitors shall attend the meetings of non-sponsored clubs only in a nonparticipatory capacity.

3. The principal or designee shall not compel any school employee to be a monitor for a non-sponsored club if the content of the speech at any meeting of the club is contrary to the beliefs of the employee.

4. Posters need to have a disclaimer and the content and placement of posters need to be approved by the principal or designee.

5. Non-school persons may not direct, conduct, control, or regularly attend meetings and activities of any non-sponsored club. Non-school persons may be permitted to meet with or speak to a club on school premises, up to twice a semester, subject to prior approval by the principal or designee.

6. Westside High School and the School District shall not be identified or associated with goals, objectives, activities, or opinions of any non-sponsored clubs or its members. School facilities may not be used by non-sponsored clubs to raise money.

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EPILOGUE

As an epilogue to the event of the Mergens case, it is pertinent to mention two concerns. First, conversations with administrators at Westside High School indicated that the 1990-91 school year was "business as usual." Students did seek to start some different kinds of organizations to meet on school property. Requests were received to start a Pro Life Club, a Pro Choice Club, a Bible Study Group, an Animal Rights Forum (a vegetarians group), and a chapter of Amnesty International. Each was discussed with an assistant principal, authorization was given, and each was announced in the school bulletin, along with a disclaimer saying, Not Sponsored by Westside High. Of the five, two never got started, two had about 20 students at start, and the other had five. At year's end, the Bible Study Group was still meeting with six students in regular attendance. There is some concern, still, about what may happen when some student wants to start a local chapter of the KKK, a neo Nazi group, or something similar. Such ventures will be carefully scrutinized, and they may not get approval if blatantly hostile to American society.

Second, there is an irony surrounding the attorney who represented Mergens, as reported in the Omaha World Herald, 6/1/91. Douglas Veith has also represented evangelical Christians and abortion protesters in various court actions. While representing Christian interests in court, Mr. Veith was also taking money from trust accounts in his law firm. Charged before the Nebraska Supreme Court, he was disbarred -- the maximum penalty -- as the Court observed, "Based upon Veith's admissions and other clear and convincing evidence...this court finds that Veith...inexcusably breached his oath of office and his duty to his clients and to the clients of the lawyers sharing office space with him."

RCO, 7/25/91